

**REGULAR STATE CREDIT UNION BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

September 16, 2005

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schaffer Street, Suite G, Bismarck, North Dakota, at 9:32 a.m., Friday, September 16, 2005, by conference call.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Paul Brucker, Member (*Mandan*)
Judy A. Millar, Member (*West Fargo*)
Melanie Stillwell, Member (*Williston*)
Steven S. Tonneson, Member (*Minot*)

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Secretary (*Office*)
Jim Laidlaw, Chief Examiner – Credit Unions (*Office*)
Corey Krebs, Financial Institutions Examiner (*Office*)
Todd Van Orman, Financial Institutions Examiner (*Office*)
Les Bossert, Genie-Watt Credit Union (*Bismarck*)

Chairman Karsky indicated the request from Dakota West Credit Union, Watford City, to invest in CUSO would be added to the agenda.

MINUTES PREVIOUSLY APPROVED BY MAIL

Chairman Karsky indicated the Board had previously received and approved the minutes of the regular meeting held on June 3, 2005, and the special meeting held on July 26, 2005.

APPLICATION BY GENIE-WATT CREDIT UNION, BISMARCK, TO ESTABLISH A BRANCH AT 1424 WEST CENTURY AVENUE, BISMARCK

Assistant Commissioner Entringer noted the application by Genie-Watt Credit Union, Bismarck, to establish a branch at 1424 West Century Avenue, Bismarck, was received on July 29, 2005, and notice was published in the *Bismarck Tribune* on Friday, August 12, 2005. No comments were received concerning the application, nor were there any requests for copies of the application.

Assistant Commissioner Entringer noted the branch is within the credit union's current field of membership and there is no proposal to expand its field of membership at this time.

Assistant Commissioner Entringer stated the application projects a profit at the end of the first year.

Assistant Commissioner Entringer stated Section 6-06-06(9) of the North Dakota Century Code states that a credit union may invest in a credit union office building, including the lot, piece, or parcel of land in which the same is located, and in furniture and fixtures to the extent authorized by regulations issued by the State Credit Union Board. The State Credit Union Board established rules under Section 13-03-15-04, North Dakota Administrative Code, which sets forth the criteria a credit union must follow when establishing a branch. The first criterion states that approval to establish the branch must be given by the Board of Directors of the credit union and, as noted, the application for the branch was approved by the Board of Directors on April 25, 2005. The second criterion states after the credit union's Board of Directors approves the application they must submit an application to establish a branch to the Department of Financial Institutions, and this application was received on July 29, 2005. The third criterion states the credit union shall, at least 30 days prior to the date of consideration by the State Credit Union Board, cause to be published a notice in the official newspaper of the county or counties affected by the proposed branch expansion. The Department sent notice of the application to be published in the *Bismarck Tribune* on August 12, 2005.

Section 13-03-15-04(2) of the North Dakota Administrative Code sets forth the requirements the State Credit Union Board will consider for a branch application. The first criterion states if the branch is for an open charter and if the application to establish a branch is accompanied by an application to expand the

field of membership, the boundaries must be clearly spelled out. This application does not include an expansion of field of membership, and the current field of membership is limited to employees of MDU Resources Group, Inc., its subsidiaries and the credit union and all members of the immediate families of the aforementioned employees. The second criterion states that the credit union must address the negative impact to any other state or federally-chartered credit union in North Dakota. This credit union is a closed charter and the branch will not impact any other credit union. In addition, the Department has not received any comments from any credit unions regarding the branch application. The third criterion states the credit union should consider the expressed need in the branching area. The proposed location of this branch will be a convenience to the membership group since it will be located next to the corporate campus of MDU and its affiliates. Included with the application is a business plan which does provide a sound basis for the addition of this proposed branch. The fourth criterion is that the State Credit Union Board must consider any expressed opposition to the branch by any other credit union in North Dakota. The Department has not received any opposition concerning the branch. The fifth criterion is that the State Credit Union Board must consider if the branch is for an open charter, whether the area being considered is satisfactorily served by a current operating credit union. As noted earlier, this credit union is a closed charter credit union. The sixth criterion indicates the State Credit Union Board must consider whether or not the credit union has the ability to succeed with the branch. As indicated in the projections, the branch is projected to show a profit in the first year of operation.

Mr. Bossert indicated he would answer any questions the Board may have regarding the application.

Member Tonneson indicated he felt the application made a lot of sense, and Member Millar concurred indicating she was impressed with the application.

It was moved by Member Millar, seconded by Member Tonneson, and unanimously carried to approve the application by Genie-Watt Credit Union, Bismarck, to establish a branch at 1424 West Century Avenue, Suite 204, Bismarck, and to authorize Chairman Karsky to sign the Order on behalf of the Board.

Mr. Bossert left the conference call at 9:40.

UNITED SAVINGS CREDIT UNION, FARGO – REQUEST TO EXTEND THE DEADLINE FOR OPENING THE BRANCH LOCATION AT LOT 3, BLOCK 2, EASTEN ADDITION, DILWORTH, MN

Chairman Karsky indicated the Board members should have received a copy of the letter from Gloria Schmunk, President of United Savings Credit Union. Chairman Karsky reviewed the request which was for an extension of 60 days from the date the credit union was required to have the Dilworth branch in operation (October 1, 2005). The request is made because the credit union is having difficulty getting its T-1 line installed to connect the Dilworth office desktop and phone lines to the mainframe computer system in Fargo. Chairman Karsky indicated he has been speaking with President Schmunk regarding this and she feels the 60-day timeframe is more than adequate to get the branch location up and running.

Assistant Commissioner Entringer noted because the Board did not issue an Order with regard to this approval, the document included is entitled a Modification of Approval which extends the timeframe to open the branch in Dilworth to December 1, 2005.

It was moved by Member Stillwell, seconded by Member Millar, and unanimously carried to grant the request by United Savings Credit Union, Fargo, to extend the deadline to open its branch in Dilworth, MN, to December 1, 2005, and to authorize Chairman Karsky to sign the Modification of Approval on behalf of the Board.

The Board went into closed session at 9:40 a.m., and reconvened to open session at 9:50 a.m.

Denton Zubke, CEO of Dakota West Credit Union, Watford City, joined the conference call at 9:50 a.m.

DAKOTA WEST CREDIT UNION, WATFORD CITY – APPLICATION TO INVEST IN A CUSO

Chairman Karsky reviewed CEO Zubke's August 31, 2005, letter with the Board, which included a business plan for a CUSO the credit union would like to establish. The letter also states the CUSO will provide a vehicle for Dakota West

Credit Union to continue relationships that have been previously established by a staff person recently hired.

Chairman Karsky noted that Section 13-03-13-04 of the North Dakota Administrative Code provides that a credit union may invest in a credit union service organization subject to the limitations provided for in the Chapter and subject to approval by Order of the State Credit Union Board. Chairman Karsky noted the investment limitation would be 10% of the equity of the credit union, and in reading the letter it appears the CUSO would be conducting data processing services, which is a permissible service and activity; therefore, the credit union does not need approval to create the CUSO, but does need approval to invest in a subsidiary.

Chairman Karsky asked CEO Zubke to review the request with the Board.

CEO Zubke indicated the reason for the request is to allow Jim Bourgois to continue to maintain the relationships for the credit unions that he had established previously, and when and if the North Dakota Credit Union League replaces him, that eventually those credit unions would transition back to the North Dakota Credit Union League. This would be a vehicle to allow Mr. Bourgois to continue to service those existing relationships if they decide to continue on. CEO Zubke indicated this matter came about because he needed a three-quarter-time IT person and had been speaking with Mr. Bourgois, who then decided he was ready to leave the North Dakota Credit Union League and work for Dakota West Credit Union. CEO Zubke indicated he does not anticipate the need to invest a great deal of money in the CUSO; however, there possibly will be some servers that will need to be purchased, as well as other computer equipment for credit unions. CEO Zubke indicated most of this will be a pass-through as the credit union will reimburse the CUSO for these equipment costs. CEO Zubke indicated the CUSO will need working capital initially; therefore, he was concerned with the process in that if he asks for \$50,000 and they exceed that, what the process would then be. Chairman Karsky indicated CEO Zubke would have to request approval from the State Credit Union Board to invest further dollars. CEO Zubke indicated he thought the best process would be to ask for \$100,000 initially, even though he does not think they will ever exceed \$50,000, but that would eliminate the need to come back to the Board multiple times.

CEO Zubke indicated in addition to reimbursement for the computer equipment costs by the credit unions, most of Mr. Bourgois' times will be billable

and would the CUSO would be reimbursed within 30 to 45 days. CEO Zubke added it was not his intention to establish new relationships, but to simply maintain the existing relationships until such time as they may or may not choose to go back to the North Dakota Credit Union League.

Chairman Karsky inquired about the revenue of \$30,000, and wondered if that was just to reimburse for Mr. Bourgois' time. CEO Zubke indicated it was; however, they would be up charging a small amount on the purchase of those equipment items that are needed. CEO Zubke added that it is not his intent to make a large amount of money, but simply to recoup his costs.

Member Brucker referred to the financials and asked how the net profit was arrived at, and Chairman Karsky indicated it appears to be an income of \$63,000 less expenses of \$59,000, for a net profit of \$4,000.

Member Stillwell asked for clarification as to what Mr. Bourgois would be doing, and CEO Zubke indicated he would work with some data processing to help the credit union with its Harland software, as well as helping install printers and possibly a sonic firewall – essentially the same duties he had while working for the North Dakota Credit Union League. CEO Zubke indicated when Mr. Bourgois gave his notice to the North Dakota Credit Union League he was asked to leave immediately, which created problems for the credit unions with which he had relationships. CEO Zubke indicated he called the affected credit unions and informed them he was looking at this and hopefully would be able to help them in the near future.

Member Tonneson stated he was hearing that this is a more or less stop-gap measure until the North Dakota Credit Union League finds a replacement person, and that he does not intend to compete with the League. CEO Zubke indicated that was correct; however, there are some credit unions that probably will not go back to the North Dakota Credit Union League and will stay on with the CUSO.

Member Brucker inquired whether it was necessary to form this CUSO or could this be done out of the credit union. Chairman Karsky indicated it this was done out of the credit union it would likely raise the unrealized business income tax issue, and CEO Zubke agreed that he did not believe he had the authority to do this out of the credit union.

Member Stillwell inquired whether the CUSO would conduct similar activities that Pro Data used to conduct, and CEO Zubke agreed they would conduct activities somewhat similar to Pro Data; however, it would be more to assist credit unions with equipment failure or processing problems, rather than to actually conduct processing for them.

Chairman Karsky asked how this differed from the management agreement whereby he is currently performing management services for the Heartland Community Credit Union, New England. CEO Zubke indicated he is not being reimbursed for his time at the Heartland Community Credit Union and added that there are limitations of liability within the management agreement whereby if he follows policy and procedures he cannot be held liable for some gross negligence. Additionally, CEO Zubke indicated the bonding company had been notified that he was conducting management services for Heartland Community Credit Union.

Chairman Karsky asked why the projections show the net income going down in the second and third years, and CEO Zubke indicated it is an anticipation that the credit unions being assisted will return to the North Dakota Credit Union League for their computer services.

Member Stillwell asked if the credit unions will be asked to invest in the CUSO, and CEO Zubke indicated this will be a wholly-owned subsidiary and the credit unions will simply be billed for Mr. Bourgois' services.

Member Brucker asked for further clarification on the services provided, as he understands the process is that if a credit union establishes a branch that Mr. Bourgois would make sure the computers are working. CEO Zubke indicated this was correct.

Member Tonneson indicated he read in the request that there could be something potentially where they could do draft processing and wondered if that was CEO Zubke's intent. CEO Zubke indicated he did not want to limit the CUSO because if the North Dakota Credit Union League decided to eliminate the draft processing business in the future, he would have this vehicle which would allow him to offer those draft processing services to North Dakota credit unions. CEO Zubke added it is not his intent to do that at this time, but did want the option available.

Member Tonneson asked how much we are looking at for the investment, and CEO Zubke indicated he does not believe he would ever go over \$50,000; however, in order to avoid problems in the future he believes it would be best to ask for \$100,000.

Chairman Karsky asked Chief Examiner Laidlaw how he felt about the \$100,000 investment, and Chief Examiner Laidlaw indicated he was fine with that amount.

It was moved by Member Tonneson and seconded by Member Millar to authorize Dakota West Credit Union, Watford City, to invest in a Credit Union Service Organization not to exceed \$100,000, and the CUSO would engage in data processing, as well as sale, lease, or servicing of computer hardware or software; management and personnel training and support; and payment item processing, and to authorize Chairman Karsky to sign the Order on behalf of the Board.

Member Brucker asked about the issue of the amount, if that was a problem. Chairman Karsky indicated the law does allow the credit union to invest up to 10% and if there were any problems, they could be dealt with as a safety and soundness issue during an examination. Member Brucker stated he was comfortable with that.

The motion was unanimously approved.

The Board went into closed session at 10:12 a.m., and reconvened to open session at 10:58 a.m.

MERGER RULES AND APPLICATIONS

Chairman Karsky indicated at the June 3, 2005, meeting Member Tonneson made a motion to have the Department meet with Assistant Attorney General Miller to develop rules regarding the equity payback of members and not to handle any merger applications involving the payback of equity until such time as these rules are in place. Chairman Karsky indicated that he, Assistant Commissioner Entringer, and Assistant Attorney General Miller met to discuss the proposed rules and Assistant Attorney General Miller indicated we do not have that authority, and so the rules as proposed have not been drafted. Chairman Karsky indicated it does not appear we will be able to draft a rule that will satisfy what the Board wanted, so we may have to draft some sort of legislation to be introduced at the next session.

Chairman Karsky stated Assistant Attorney General Miller thought we might be bordering on legislating, rather than implementing rules to help.

Assistant Commissioner Entringer indicated one of the motions was for the Department to approve the method and date of the equity payback, and indicated we did look at that and approved that methodology.

Chairman Karsky indicated Assistant Attorney General Miller stated it would difficult for the Board to follow Member Tonneson's motion not to act on applications involving payback of equity until the new rules are drafted because the current regulations do require the Board to act on any application. Chairman Karsky indicated he still feels the industry will dictate how that works.

Member Tonneson indicated all the Board is asking for is guidelines are far as what it can do in the future.

NEXT MEETING DATE

The Board discussed the meeting scheduled for December 2, 2005, and the consensus was to reschedule the meeting for December 9, 2005, as Member Stillwell indicated that would work better for her schedule, and Members Brucker and Tonneson indicated that would work for them. Member Millar stated she would check on that date and get back to Assistant Commissioner Entringer.

The meeting adjourned at 11:02 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary